

ENTERED

January 19, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

DOUGLAS TYRONE ARMSTRONG,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

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CIVIL ACTION NO. 7:18-CV-00356

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner Douglas Tyrone Armstrong's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, which had been referred to the Magistrate Court for a report and recommendation. On September 8, 2020, the Magistrate Court issued the Report and Recommendation, recommending that Respondent's motion for summary judgment be granted, that Petitioner's § 2254 habeas petition be denied, and that this action be dismissed. The Magistrate Court further recommended that a certificate of appealability be granted as to Petitioner's ineffective-assistance claim alleging failure to investigate and denied as to his other claims. Petitioner has filed objections to the Magistrate Court's Report and Recommendation which are timely pursuant to the extension of time granted by this Court.

Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court has made a de novo determination of those portions of the report to which objections have been made. As to those portions to which no objections have been made, in accordance with Federal Rule of Civil Procedure 72(b), the Court has reviewed the report for clear error.

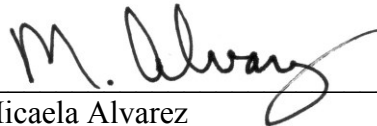
Having thus reviewed the record in this case, the parties' filing and the applicable law, the Court adopts the Report and Recommendation in its entirety.¹ Accordingly, it is hereby

¹ The Court does not address any objection specifically but does note that Petitioner misconstrues much of the Magistrate Judge's Report. For example, contrary to Petitioner's assertion, the Magistrate Judge did not view "each piece of new evidence in isolation." [Kdt. No. 30, p. 3] but rather the Magistrate Judge did "consider the totality of the evidence." [Dkt. No. 26, p. 29] Petitioner also takes issue with the Magistrate Judge's description of the alleged murder weapon as a "box cutter" [Dkt. No. 30, p. 11] claiming this shows sympathy for the prosecution case. In fact, such "utility knives" are also sold as "box cutters." See: www.amazon.com. Petitioner also ignores any evidence justifying the Magistrate Judge's opinion. In one instance for example, Petitioner cites a barmaid's testimony that

ORDERED that Respondent's Motion for Summary Judgment be and it is hereby GRANTED, Petitioner's Petition for Writ of Habeas Corpus Pursuant to § 2254 is DENIED, and this action is DISMISSED. It is further ORDERED that a certificate of appealability is granted as to Petitioner's ineffective-assistance of counsel claim alleging failure to investigate and denied as to his other claims.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 19th day of January, 2021.

A handwritten signature in black ink, appearing to read "M. Alvarez", is written over a horizontal line.

Micaela Alvarez
United States District Judge

she did not know how much money Petitioner spend at the bar as being "unequivocal" [Dkt. No. 30, p. 19] when in the very next answer the same witness testified that Petitioner spend over \$200. [See Dkt. No. 6-57, p. 30]